

## **REMARKS**

Initially, Applicants herein affirm the election of Group II, drill guide species 3, for prosecution in the present application. Claims 6-13, 15-18, 20, and 25-30 are pending. Claims 1-5, 14, and 21-24 were previously withdrawn by the Examiner and have been cancelled without prejudice. Claim 19 has likewise been cancelled without prejudice. Claim 6 is currently amended. Claims 25-30 are new. No new matter has been added.

Independent claim 6 has been amended to more particularly point out that the at least one drill guiding barrel is “movably attached” to the outer stem, and to supply a proper antecedent basis for the term “outer stem.” Support for these amendments is found, *inter alia*, on page 9 and Fig. 11 of the specification as-filed.

New claims 25-30 have been added to more particularly point out what Applicant regards as his invention. Support for claims 25-30 is found, *inter alia*, on pages 9-10 and Fig. 11 of the specification-as-filed.

### ***Rejections under 35 U.S.C. § 112***

Claims 6-13 and 15-20 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner stated that the claim recitation “a tab to engage an opening in a bone plate to align and stabilize the drill guide assembly” does not appear to be enabled by the disclosure. Since in fact enabling support for this limitation appears in the specification-as-filed at 7:17-19 and Figs. 8 and 8B (tab 132), and again at 7:39 to 8:1-2 and Fig. 9 (tab 232), Applicants understand the Examiner to mean that the recited tab is not disclosed as an element of the elected Group II, species 3. As claim 6 has been amended to remove “a tab,” Applicants respectfully submit that these rejections should be withdrawn.

Claims 6-13 and 15-20 were also rejected under 35 U.S.C. § 112, second paragraph, on the basis that the term “the outer stem” in claim 6, line 3 lacked antecedent basis. Applicants have amended claim 6 to provide antecedent basis for “outer stem,” and respectfully submit that these rejections should similarly be withdrawn.

### ***Rejections under 35 U.S.C. § 102***

Claims 6, 11, 15, and 16 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,465,065 to Gottfried (Gottfried). Claim 6 recites a surgical drill assembly wherein “the at least one drill guiding barrel is movably attached to the outer stem.” Gottfried describes a surgical device for the connection of fractured bones having a

straight grip 10 and a connector arm 11 formed from a bent, straight bar. (*See* Gotfried at 4:13-19, Figs. 1-3). Thus, as the grip 10 and arm 11 are integrally formed of the same straight bar, these elements are *not* “movably attached.”

Further, while Gotfried discloses a guide assembly, the guide assembly of Gotfried is adapted to be insertable into bores 16 and 17 in straight grip 10. The guide assembly of Gotfried is *not* movably attached to an outer stem. (*See id.* at 4:55-65 and Figs. 3-4).

Accordingly, Gotfried fails to disclose each and every element of claim 6. Thus, the rejection of claim 6 should be withdrawn. As claims 11, 15, and 16 depend from claim 6, the rejection of these claims should also be withdrawn, for at least this reason.

### *New Claims*

As noted above, new claims 25-30 have been added. It is believed that new independent claim 25 is patentable over Gotfried, as claim 25 recites “the drill guiding barrel being pivotable about an axis of rotation substantially parallel to the first longitudinal axis” whereas Gotfried discloses grip 10 and arm 11 integrally formed from a single bar. (*See* Gotfried at 4:13-19, Figs. 1-3). Because claims 26 and 27 depend from claim 25, it is believed that claims 26 and 27 are patentable over Gotfried for at least this reason.

It is believed that new independent claim 28 is patentable over Gotfried. Claim 28 recites “a drill guiding barrel pivotably attached to the outer stem.” In contrast, Gotfried discloses Gotfried discloses grip 10 and arm 11 integrally formed from a single bar. (*See* Gotfried at 4:13-19, Figs. 1-3). Because claims 29 and 30 depend from claim 28, it is believed that claims 29 and 30 are patentable over Gotfried for at least this reason.

### CONCLUSION

It is believed claims 6-13, 15-18, 20, and 25-30 are in condition for allowance. Should the Examiner not agree with any of Applicant's positions or arguments herein, a telephonic or personal interview is respectfully requested to discuss and resolve any remaining issues.

It is believed that a fee of \$120 for a one-month extension of time is due with this amendment. Please charge this fee or any other fee(s) that may be due to Jones Day Account No. 503013.

Respectfully submitted,

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